

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

TRUSTEES OF THE TEXAS IRON  
WORKERS PENSION TRUST FUND  
*et al.*,

Plaintiffs,

v.

§ CIVIL ACTION NO. H-09-3793

DANNY L. ISBELL, *Individually* and  
d/b/a BLACK DIAMOND ERECTORS  
LLC.,

Defendants.

**ORDER FINDING DANNY L. ISBELL IN CIVIL CONTEMPT**

The Trustees of the Texas Iron Workers' Health Benefit Fund, Trustees of the Texas Iron Workers' Pension Trust Fund, Trustees of the Iron Workers' Defined Contribution Retirement Plan, Trustees of the Texas Iron Workers' Vacation Fund, and Trustees of the Texas Iron Workers and Employers Apprenticeship Training and Journeyman Upgrading Fund, movants, under Rule 37(a) and (d) of the Federal Rules of Civil Procedure, filed their Motion for Contempt based on the failures by Danny L. Isbell and Black Diamond Erectors, LLC to comply with this court's prior orders. (Docket Entry No. 19). The failures to comply were as to this court's order dated September 22, 2010 requiring the respondents to serve on the plaintiffs responses to post-judgment interrogatories and post-judgment requests for production of documents "no later than October 15, 2010" and an order dated November 8, 2010 directing Danny L. Isbell to appear on February 11, 2011 at 8:30 a.m. before United States District Judge Lee H. Rosenthal and show cause why he should not be held in contempt of this court's prior order. (Docket Entry Nos. 18, 21). The show-

cause order was personally served on the respondents, Danny L. Isbell and Black Diamond Erectors, LLC, on February 7, 2011 by private process server and again on February 8, 2011 by the Constable of Tarrant County, Texas. (Docket Entry Nos. 22, 25).

Isbell and Black Diamond Erectors, LLC failed to appear on February 11, 2011, in person or through counsel, to show cause why he should not be held in contempt of court. (Docket Entry No. 24). The plaintiffs' request that Isbell pay \$850 in attorney's fees reflects a reasonable number of hours worked at a reasonable rate and is granted.

For a finding of civil contempt, a party must be shown "to have failed 'in meaningful respects to achieve substantial and diligent compliance' with a clear and unambiguous court decree." *Lelsz v. Kavanagh*, 673 F. Supp. 828, 839 (N.D. Tex. 1987) (quoting *Aspira of N.Y., Inc. v. Bd. of Educ. of City of N.Y.*, 423 F. Supp. 647, 649 (S.D.N.Y. 1976)); see also *In re Baum*, 606 F.2d 592, 593 (5th Cir. 1979). "The movant in a civil contempt proceeding bears the burden of establishing by clear and convincing evidence: (1) that a court order was in effect; (2) that the order required certain conduct by the respondent; and (3) that the respondent failed to comply with the court's order." *Petroleos Mexicanos v. Crawford Enters., Inc.*, 826 F.2d 392, 401 (5th Cir. 1987); *Am. Airlines, Inc. v. Allied Pilots Ass'n*, 228 F.3d 574, 581 (5th Cir. 2000).

The plaintiffs have proved by clear and convincing evidence that this court ordered Isbell and Black Diamond Erectors, LLC to comply with the plaintiffs' discovery requests by October 15, 2010, and that he failed to comply with the District Court's order. Clear and convincing evidence was presented to the court that Isbell received the order to show cause but failed to appear. The plaintiffs incurred \$850 in attorneys' fees and costs for preparing and filing the Motion for Contempt and associated pleadings and these attorneys' fees and costs are taxed against Isbell and Black

Diamond Erectors, LLC.

Danny L. Isbell is in civil contempt of this court. Danny L. Isbell must pay \$850 in attorneys' fees to the plaintiffs no later than May 29, 2011.

The United States Marshals are ordered to take Danny L. Isbell into custody and bring him before this court. He will be incarcerated until such time as he purges himself of the contempt by serving on the plaintiffs responses to the post-judgment discovery or as otherwise ordered by this Court. Danny L. Isbell's last known addresses are: 112 South Norwood, Hurst, Texas 76053, and 513 Oakmont Lane N., Fort Worth, Texas 76112.

SIGNED on April 21, 2011, at Houston, Texas.

  
\_\_\_\_\_  
Lee H. Rosenthal  
United States District Judge